

UNITED STATES DISTRICT COURT

Northern District of California

San Francisco Division

GARY GIANNINI,

No. C 14-05227 LB

Plaintiff,

**ORDER CONSTRUING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AS AN OPPOSITION TO
DEFENDANT'S MOTION TO
DISMISS**

v.

CARPENTERS PENSION TRUST FUND
FOR NORTHERN CALIFORNIA,

[Re: ECF No. 13]

Defendant.

Plaintiff Gary Giannini, who is proceeding pro se, sued Defendant Carpenters Pension Trust Fund for Northern California in state court. Defendant removed the action to federal court and now moves to dismiss the action, arguing that Plaintiff's claims are preempted under the Employee Retirement Income Security Act ("ERISA"). *See* Motion to Dismiss, ECF No. 5. Defendant filed its motion on December 2, 2014, and served Plaintiff with it by mail. Plaintiff's opposition to the motion was due on December 19, 2014. *See* N.D. Cal. Civ. L.R. 7-3(a). Plaintiff missed that deadline, so the court extended the deadline to January 8, 2015. *See* 12/24/2014 Order, ECF No. 11.

On that day, Plaintiff filed a document that is captioned as a motion for summary judgment, but which states only and without elaboration that he was never informed that he was supposed to send a copy of his social security award letter to Defendant within 90 days of receiving it and that he would like to invoke the Seventh Amendment right to a jury trial. *See* Opposition, ECF No. 13. This does not appear to be a motion for summary judgment but instead appears to be an opposition to

1 Defendant's motion to dismiss. A motion for summary judgment also is not appropriate at this stage
2 of the litigation. Accordingly, the court construes Plaintiff's filing as an opposition and terminates
3 the motion within the court's Electronic Case Filing system. Pursuant to the court's December 24,
4 2014 order, Defendant's reply is still due on January 15, 2015, and the hearing on the motion is still
5 set for 9:30 a.m. on January 29, 2015 in Courtroom C, 15th Floor, United States District Court, 450
6 Golden Gate Avenue, San Francisco, California 94102. *See id.*

7 **IT IS SO ORDERED.**

8 Dated: January 12, 2015



9 LAUREL BEELER
10 United States Magistrate Judge
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